

ADVISORY OPINION NO. 94-08
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON APRIL 7, 1994

GOVERNMENTAL BODY SEEKING OPINION

A County Commission Member

OPINION SOUGHT

Is it a violation of the Ethics Act for a County Commission Member to charge the County Solid Waste Authority a monthly fee for its use of the Commission Member's property?

FACTS RELIED UPON BY THE COMMISSION

The County Commission is authorized by law to appoint two members of the County Solid Waste Authority's five member board. Further, pursuant to WV Code §20-9-6, the County Commission has the authority to determine the amount of funds to be allocated annually to the Solid Waste Authority. These funds pay for the Authority's secretarial and clerical assistance, office supplies and general administrative expenses related to the development of the litter and solid waste control plan and to provide solid waste collection and disposal services.

The requestor is a member of the County Commission and owns property currently being utilized by the County Solid Waste Authority. This property consists of the road leading to the County landfill and the lot on which the Authority's office trailer is located. The requestor would like to charge the Solid Waste Authority a monthly fee for the use of this property.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no elected...public official...may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he...may have control...

West Virginia Code §61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

ADVISORY OPINION

Interest in Public Contracts

The requestor is a member of the County Commission and owns property which is currently being used by the County Solid Waste Authority. He would like to charge the Authority a monthly fee for the use of this property. Pursuant to WV Code §6B-2-5(d)(1), a public official may not have more than a limited interest in the profits or benefits of a public contract over which he has direct authority or control. The requestor would have a direct pecuniary interest in the user's fee from the Solid Waste Authority. However, his position on the County Commission does not give him direct authority or control over the Solid Waste Authority's contracts.

Therefore, it would not be a violation of WV Code §6B-2-5(d)(1) for the County Commission Member to charge the County Solid Waste Authority a monthly fee for its use of his property.

West Virginia Code §61-10-15

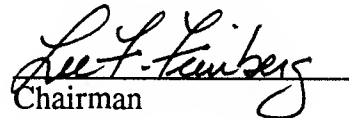
West Virginia Code §61-10-15 provides that it is a criminal violation for any county officer to be pecuniarily interested, directly or indirectly, in the proceeds of any contract or service when he may have voice, influence or control over the letting of such contract. The West Virginia Supreme Court, interpreting WV Code §61-10-15, has held that a public official has voice, influence or control over a public contract simply by virtue of his public position.

Further, the Court, in Fisher v. Jackson, 107 W.Va. 138. 147 S.E. 541 (1929) held that the recusal of a public official from voting on a particular matter in which he has a direct or indirect pecuniary interest was not sufficient to immunize that official from the sanctions now contained in WV Code §61-10-15.

As previously noted, the requestor is a member of the County Commission and the owner of property currently being used by the Solid Waste Authority. He would like to charge the Solid Waste Authority a monthly fee for the use of this property. Although the County Commission does not have **direct** authority or control over the Solid Waste Authority, the Commission does appoint two of the five members of the Authority's Board. Further, the expenses incurred by the Solid Waste Authority are paid by the County Commission and the County Commission determines the amount of money to be allocated to the Solid Waste Authority for its operation.

The Commission finds that the power of the County Commission to appoint members to the Solid Waste Authority Board, along with the County Commission's responsibility for funding the Solid Waste Authority, is sufficient to give the County Commission some voice, influence or control over the County Solid Waste Authority's contracts. Consequently, the requestor's position as a County Commissioner does give him the degree of control contemplated by WV Code §61-10-15.

Therefore, it would be a violation of WV Code §61-10-15 for the requestor to charge the County Solid Waste Authority a monthly fee for its use of the Commission Member's property.


Chairman